

TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
May 4, 2006

Board Present: Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Frank Muddle, Dan Remian, PB Attorney Greg Cunningham, CEO Scott Bickford and Secretary Crystal Robinson

Board Absent: None

1. Call to Order: Chairman Remian called the meeting to order at 7:02 pm and a roll call was taken.

2. Minutes of 4/5/06:

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Kiskila, to accept the minutes of the 4/5/06 meeting as Carried 5-0-0

3. John Mathieson, Surveyor, representing Elisabeth Ogilvie Gay Island Properties

Subdivision, Map 7, Lot 8, for final approval: Mr. Mathieson pointed out on his plan the items that had been discussed at the last meeting. He said attorney Randy Watkinson, after speaking with PB attorney Greg Cunningham, had sent him an email that referenced Items #1-6; he showed this email to Mr. Cunningham. Mr. Mathieson said he had broken out three other items: the conservation easement, the fire pond and the brooks and streams. He had also added flood plain language Mr. Ellis had requested, showing it on the plan and adding a note that said it complied with the subchapter in the ordinance. Mr. Remian asked if V17 was depicted and Mr. Mathieson said it was. Mr. Cunningham said the plan was consistent with his notes. Mr. Remian said the PB would proceed with the final review.

Chairman Remian read aloud each review criteria of the subdivision ordinance before it was discussed.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.1 (Pollution). Carried 5-0-0

Mr. Remian said that all well locations on the plan were private, probably hand dug, and there was no water distribution system on the island.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.2 (Sufficient water). Carried 5-0-0

Mr. Cunningham suggested the chairman, as part of the PB's analysis, ask the applicant what he had presented relevant to each item of the review criteria.

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, that 7.3 (Municipal water supply) was not applicable. Carried 5-0-0

Mr. Mathieson said no construction was proposed and all erosion issues would be addressed by

building permits.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.4 (Erosion) based on no construction resulting from the application.
Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, that 7.5 (Traffic) was not applicable because there were no roads on the island.
Carried 5-0-0

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Muddle, for a positive finding of fact on 7.6 (Sewage disposal).
Carried 5-0-0

Mr. Mathieson said there was no municipal solid waste service on the island.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.7 (Municipal solid waste and sewage disposal).
Carried 5-0-0

Mr. Mathieson said conservation easements, as well as statements on the plan, would maintain the pristine beauty of the island.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.8 (Aesthetic, cultural and natural values).
Carried 5-0-0

Mr. Mathieson said everything being done on the island would conform to town ordinances. He added that nothing could be changed without PB approval.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, for a positive finding of fact on 7.9 (Conformity with local ordinances and plans).
Carried 5-0-0

Mr. Mathieson said he believed Mrs. Ogilvie had the financial capacity to implement her plans.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.10 (Financial and technical capacity) based on the fact that no construction was proposed.
Carried 5-0-0

Mr. Mathieson said there was nothing being done that would adversely affect Pleasant Point Gut, the island bay or the St. George River; the island was being broken up into large pieces, which would not affect any water body. Mr. Remian noted that the application stated there were no streams or fresh water bodies within the subdivision; there was a saltwater wetland depicted on the plan.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.11 (Surface waters;

outstanding river segments) based on no outstanding river segments as per Title 38.
Carried 5-0-0

Mr. Mathieson stated there was no major development that would affect groundwater on the island. Sewage was handled by duly tested private privies, which met state codes for surface wastewater disposal systems. Mr. Remian noted that Item #15 of the application also addressed this issue.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.12

(Groundwater).
Carried 5-0-0

Mr. Mathieson said there were some 100-year flood areas on the eastern side of the island within the flood elevation V17, Resource Protection [RP]. There was an existing building in that area that was on stilts and could not be expanded without a flood elevation certificate. Other buildings existed in the flood zone on Pleasant Point Gut, but no further development would be done in island flood zones.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.13 (Flood areas).

Carried 5-0-0

Mr. Mathieson stated there were no major wetlands other than those he had shown in back of the beach. Mr. Cunningham asked Mr. Mathieson what he meant by “apparent wetlands” on the plan. Mr. Mathieson said he had located the wetland with a GPS receiver. He said “apparent” referred to observation of a wetland by the appearance of vegetation. Mr. Remian ascertained that that survey had been done in September 2005. Mr. Cunningham said this subdivision would not involve development, but any new development would need PB approval. He suggested that a condition of approval be that there be a depiction on the plan delineating the wetlands. He suggested the following language: “Any application seeking to develop any lot within this subdivision shall include a wetland delineation.” Mr. Ellis questioned whether this was redundant since no development was planned. Mr. Cunningham said any future application would be an amendment to the subdivision and the PB could choose the criteria under which it would be reviewed; future PB members might have no history with this subdivision. Mr. Remian asked if this condition could be included on the Mylar and Mr. Mathieson said it could.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.14 (Freshwater

wetlands) with the aforementioned condition.
Carried 5-0-0

Mr. Mathieson said he had shown all apparent wetlands and stated there were no open streams or other bodies of water in the development. Mr. Remian said this was also stated in the application.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.15 (River, stream or

brook) based on submission and testimony.
Carried 5-0-0

Mr. Mathieson stated that, barring any further development, there would be no new buildings or construction, and so no new impervious areas would be created. Most storm water was collected on rooftops for use.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Muddle, for a positive finding of fact on 7.16 (Storm water)

Carried 5-0-0

Mr. Mathieson said all of the lots were large; there were no spaghetti lots.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.17 (Spaghetti lots prohibited)
Carried 5-0-0

Mr. Mathieson said there would be no major earthwork or anything else that would increase the phosphorous runoff.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.18 (Lake phosphorous concentration)
Carried 5-0-0

Chairman Remian then proceeded to lead a review of the general requirements of the subdivision ordinance, reading each aloud before it was discussed.

Mr. Mathieson stated the use of the island would remain as in the past and thus should conform to the town's plans.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 8.1 (Conform to the comprehensive plan) because Cushing had no comprehensive plan.
Carried 5-0-0

Mr. Mathieson stated that some of the property was in the RP and flood plain zones, though the bulk was not.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 8.2 (Land suitable for development) based on the information on the plan and the fact that there was no proposed development.
Carried 5-0-0

Mr. Cunningham said the PB did not need to vote on 8.3 (Burden of proof) and 8.4 (Required improvements). Mr. Mathieson said that permanent markers had been placed on all corners with 3/4" rebar and a plastic cap with his license number.

ACTION: Mr. Muddle made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 8.5 (Markers)
Carried 5-0-0

Chairman Remian then read aloud the design and performance standards and asked Mr. Mathieson to respond to each one. Mr. Mathieson stated that all lots in the subdivision exceeded 40,000 square feet; all lots met the HH soil criteria: all lots met the minimum shore frontage requirements; the ratio of lot length to width was no more than 5 to 1; all lots had water access.

ACTION: Mr. Kiskila made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 9.1(A-E) (Lots: size and shape, etc.).
Carried 5-0-0

Mr. Mathieson said each lot abutting a water body had 150' of frontage and a 150' diameter circle could be enclosed in each.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 9.2 (A&C) (Frontages).
Carried 5-0-0

Mr. Remian asked Mr. Mathieson if there was an open space provided and received a negative answer. Mr. Mathieson said the covenants spoke to free use of the island but there were no common areas.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, that 9.3 (Open space provision) was not applicable.
Carried 5-0-0

ACTION: Mr. Muddle made a motion, seconded by Mrs. Kalloch, that 9.4 (Mobile home parks) was not applicable.
Carried 5-0-0

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Muddle, that 9.5 (Cluster development) was not applicable.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 9.6 (Surface drainage).
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, that 9.7 (Sewage disposal) and 9.8 (Water supply) had been discussed, were redundant, and did not apply.
Carried 5-0-0

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, that 9.9 (Road standards) did not apply.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, that 9.10 (Cleanup) and 9.11 (Certification of completion of roads) did not apply.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, that 9.12 (Fire pond) had been addressed by the waiver noted on the plan as Note #8.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, to accept the plan as submitted, with the addition of Conditions 1-9 listed on the plan and that the change in the wetland requirement be added to the plan.
Carried 5-0-0

4. Art Tibbetts, representing Peter Stifel, Map 7, Lot 42, for pier connection permit:

Chairman Remian said he thought the CEO could handle this permit. Mr. Bickford said he could with the PB's approval. Dan Staples said he had reviewed the site with the Army Corps of Engineers, Dept. of Marine Resources and the DEP and found no problems with navigation or any environmental concerns. Mr. Ellis asked if there was a stairway on the plan and Mr. Tibbetts

responded that it was a 16' X 4' dock across ledge.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Kiskila, to allow the CEO to issue a permit.

Carried 4-0-1 (Mr. Muddle abstained)

5.Cushing Holdings, LLC, Meduncook Plantation Subdivision Amendment, Map 6.

presented by James Tower: Mr. Tower provided the members with maps and posted one on the wall. He provided his usual self-introduction. He stated that he had previously submitted to the PB an application that had been partially reviewed. In addition, he had applied for amendments to his DEP permit and storm water management plans for the project; copies had been provided to the town and became part of his application. Mr. Tower said he had received approval from the DEP and it had been recorded at Knox County Registry of Deeds. On 3/9/06 on a Site Walk, he said he had provided copies of pages of the town's Shoreland Zoning ordinance [SZ]; he provided these to the members again tonight.

Mr. Tower referred the PB to Page 10, Table 1 (Land Uses), where he said that a Limited Residential [LR] District needed PB approval for Line 26 (Road and Driveway Construction). He contended that he was building the road in a LR portion of the SZ. He said the PB had raised questions as to whether portions of the land qualified as Resource Protection [RP]. Mr. Tower stated his contention that they did not because 1) the land failed to meet the definition of RP and 2) the land was not listed in the town's map and lot numbers that designated RP due to slope. Even if there were sufficient contiguous slopes, he said, Note 7 read "Except to provide access to permitted uses within the district or where no reasonable alternative route or location is available outside the RP, in which case a PB permit is required." Mr. Tower stated that he had permitted uses, the first of which was to groom the lot so it complied with the SZ grooming specifications. Therefore, he said, he had demonstrated that the road could be constructed in the location indicated on his plan.

Carlton Johnson, Mr. Tower's broker, said that he would share information with the PB that he had received as Chairman of the Selectmen of the Town of Waldoboro. He provided an email from Lincoln County Town Planner Robert Fontz to DEP's Richard Baker concerning lots that fell within RP in Waldoboro. He said Waldoboro had a Comprehensive Plan map that disagreed with the town's attested map in regards to RP. Mr. Johnson read aloud a portion of the email. He then read aloud Mr. Baker's response to this email. Mr. Johnson said he presented this as another interpretation from Mr. Baker in regards to 1) how to deal with slopes and 2) if a property fell within RP if it was not designated by an official map.

Mr. Remian asked what area he was speaking of and Mr. Johnson replied, "Any area." Mr. Remian then said Cushing's map depicted Mr. Tower's roadway as RP, with the hammerhead being LR. In order to change the map, he said, Town Meeting and DEP approval would be required. Mr. Cunningham said Cushing had a general zoning map, without property line depiction or scale, which indicated sections of the SZ designated as RP. He quoted the ordinance as saying, "It is hereby stipulated that the official map is to be construed as illustrative only, subordinate to the written language of the ordinance." Mr. Cunningham said the terms of the ordinance dictated that the CEO could make a field determination of RP, an expert could be hired, or the permitting authority could make the determination. He concluded that the PB had to determine if it was convinced the property in question was only in LR and, therefore, did not affect the RP. If the PB was not convinced, then it should decide what additional information was needed to make the determination and should also respond to Mr. Tower's statement that the ordinance said he could build the road in RP if it led to a permitted use.

Mr. Cunningham said he disagreed with Mr. Tower's interpretation. He contended that the ordinance said if it leads to a permitted use within the RP district, then the road would be permitted through the RP; if the permitted use was not in RP, even though surrounded by RP, and there was access outside the RP, then Mr. Tower needed to convince the PB there was no reasonable alternative to putting the road through RP. Mr. Remian ascertained that his letter regarding submissions, responding to Mr. Tower's letter, had been received by Mr. Tower. Mr.

Remian then said Mr. Tower was presenting new evidence beyond the 15-day deadline and asked the Board if it wanted to continue the discussion. Mrs. Kalloch asked if the question before the Board concerned Lot 26, the road entrance and Lot 10 and the chairman said it did. Mr. Cunningham suggested that the Board give Mr. Tower the opportunity to proceed on all the evidence submitted to the Board prior to this evening.

Mr. Remian said the completeness of the application had not been determined. Mr. Tower said there had been substantive review but Mr. Remian said some information was missing; for instance, the West Knoll property had been part of the project and the PB had asked for a copy of the deed to that property. Mr. Tower said that property had never been included in the discussion of the hammerhead peninsula. He said he had elected to remove the property line on the drawing at this time so he would not put forth a document that designated a property line between two properties that were not the subject of this application, namely the property line formerly between the properties of West Knoll and Kim Young. Mr. Remian confirmed that no part of Meduncook Plantation Subdivision [MP] contained any of West Knoll's land. Mr. Cunningham asked if what the PB was lacking affected completeness or the applicant's ability to meet one of the standards. If the previous submissions would otherwise make the application complete, he felt that PB should give the applicant the option of a completeness review. Mr. Bickford ascertained that the application under discussion was the MP amendment dated January 6. Mr. Tower asked the PB to review the minutes of the last two meetings to determine if there had been a completeness review. He then asked Mr. Cunningham to elaborate on the presumption of completeness once substantial review had begun. Mr. Cunningham responded that he was unsure what the applicant was calling "substantial review" and said there was a process the Board had to follow to make a finding as to the completeness of the application. Mr. Tower said he disagreed with Mr. Cunningham's assertion.

Mr. Tower then addressed the chairman and said he had just heard Mr. Cunningham say, "I'm sure you do." He said he believed that as a result of an appeals process, which had not yet been adjudicated, Mr. Cunningham was alleged to have acted under a conflict of interest and his comment constituted a second instance of such. Mr. Tower said he would ask Mr. Cunningham to recuse himself from the proceedings. Mr. Remian said he did not see Mr. Cunningham's comment as a conflict of interest and asked how the Board felt. Mr. Muddle said he did not think the other matter had anything to do with this matter. Mr. Ellis said he had not seen any conflict and asked Mr. Tower to describe it. Mr. Tower started to explain and then requested that the Board take action.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, that Mr. Cunningham not recuse himself from the proceedings.
Carried 5-0-0

Mrs. Kalloch read from some previous minutes and Mr. Ellis said he had found no review for completeness. Mr. Remian asked Mr. Tower if he would like the Board to review the application for completeness and the applicant said he would. Mrs. Kalloch said Lots 9 & 10 had changed in acreage, as had the common areas, since the application was submitted. Mr. Tower responded that amendments made along the way did not require a new application and Mr. Remian agreed. Mr. Remian then asked that Mr. Tower provide a revision cloud whenever he made changes to any of his drawings. Chairman Remian asked if the plan Mr. Tower had submitted this evening, along with the email from Rich Baker, was what Mr. Tower wanted the Board to review this evening. Mr. Tower said it was. Mr. Remian said these were late submissions and should not be included as part of the review. He noted that there had been several letters regarding late submittals

ACTION: Mr. Remian made a motion, seconded by Mr. Ellis, that the Board not review this particular drawing or the submitted letters from Bob Fontz and Rich Baker until the next meeting, when the PB would have had time to review them.

Carried 3-1-1 (Mr. Kiskila voted against and Mr. Muddle abstained)

Mr. Tower said he did not think the submittals were of such substance that they could not be digested fairly quickly. He said, however, he wished to continue without those submissions. Chairman Remian then stated that the PB would commence a completeness review for the amendment application to MP, dated January 26, 2006. Mr. Cunningham suggested the chairman refer to Article 6, which gave provisions on how to proceed with already approved plans. Mrs. Kalloch asked for clarification that the survey standards on the map dated 1/26/06 were part of the review. Mr. Remian said the PB would start on Page 7 (Application for subdivision approval) of the Subdivision Regulations of the Town of Cushing.

First, Mr. Remian said the Board did not have signed copies of the amendment application. Mrs. Kalloch said she had a question on the Tax Maps for Lots 81, 84, 85 and 86. Mrs. Kalloch said those lots were incorrect on the application and Map 5, portion of Lot 84, constituted Lot 26 on the application. Mr. Remian said that Lot 81 should be omitted from the application because it was included in error. The chairman then said the application did not include a list of abutters nor the names of adjacent owners. Mrs. Kalloch said the acreage to be developed was incorrect because it should just be referring to Lot 26. Mr. Tower said the area of the roadway ROW was included in the acreage. Mr. Remian asked if the abutters had been notified in writing and if he had return receipts. Mr. Tower said there was only one abutter, who had been notified along with the previous abutter and current owner. The chairman said the requested drainage calculation for storm water runoff had not been received. Mr. Tower said a copy had been delivered to the Town Office; the CEO said he had not received it.

Mr. Remian then said the amendment declaration listed Lots 1 through 25 and should list Lots 1 through 26. Mr. Tower said it had been corrected but Mr. Remian said a corrected application had not been received. He asked Mr. Tower to confirm that January 26 was the date of his last submission, which he did. The Board determined that Mr. Tower intended to have both letters (dated 7/15/03 and 12/2/05) from Fish & Wildlife included in his application. Mr. Remian then said the application showed 3.57 acres of common area while the latest plan showed 4.77 acres of retained land and asked which was correct. Mr. Tower replied that the common area had been changed but he wanted 3.57 to stand "for the moment". Mr. Remian said he felt the submission was complete, with some inaccuracies, and asked if Mr. Tower would like the Board to proceed with the review criteria. Mr. Tower said they could but he would be back with an amended drawing; he said he would like a final review on MP. Mr. Remian clarified that the drawing being used for review was dated 1/26/06 by a professional engineer.

Mr. Remian said the Board, at the request of Mr. Tower, would proceed with the review criteria, minus the drawing and letters from Mr. Baker and Mr. Fontz that had been submitted this evening. Mr. Ellis asked that the Board first determine which criteria applied to the amendment and the chairman said they would decide that by discussion of each item. Mr. Cunningham pointed out that Mr. Tower had provided responses to the review criteria under Tab 1 of his application. Mr. Remian read aloud the title of each review criteria and Mr. Tower read aloud his submitted response to each, prior to any discussion of it by the Board.

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.1 (Pollution) based on
the information submitted.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.2 (Sufficient water)
based on Mr. Tower's very thorough submission.
Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, that 7.3 (Municipal water supply) was not
applicable.

Carried 5-0-0

Mr. Tower read his submission under 7.4 (Erosion) and added that construction in Meduncook Bay Colony was last year subjected to two storms that exceeded the 500-year storm criteria, with virtually no runoff containing erosion or sedimentation.

ACTION: Mr. Kiskila made a motion, seconded by Mr. Ellis, for a positive finding of fact on 7.4 (Erosion).

Carried 5-0-0

Mr. Muddle said that Mr. Tower had used 1994 standards for a 2006 application and said the DOT said a household produced 10 trip ends per day. Mr. Tower responded that he was using peak hour figures. Mr. Cunningham said a state permit was required only if 100 trips were generated during peak hours.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.5 (Traffic).

Carried 5-0-0

ACTION: Mr. Kiskila made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.6 (Sewage disposal).

Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.7 (Municipal solid waste and sewage disposal).

Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.8 (Aesthetic, cultural and natural values).

Carried 5-0-0

ACTION: Mr. Kiskila made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.9 (Conformity with local ordinances and plans).

Carried 5-0-0

ACTION: Mr. Muddle made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.10 (Financial and technical capacity).

Carried 5-0-0

ACTION: Mr. Kiskila made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.11 (Surface waters; outstanding river segments).

Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.12 (Groundwater) based on the applicant's submission.

Carried 5-0-0

ACTION: Mr. Kiskila made a motion, seconded by Mr. Ellis, for a positive finding of fact on 7.13 (Flood areas).

Carried 5-0-0

ACTION: Mr. Kiskila made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.14 (Freshwater

wetlands).
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, for a positive finding of fact on 7.15 (River, stream or brook).
Carried 5-0-0

ACTION: Mr. Kiskila made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.16 (Storm water)
Carried 5-0-0

ACTION: Mr. Kiskila made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.17 (Spaghetti lots prohibited).
Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.18 (Lake phosphorous concentration).
Carried 5-0-0

Mr. Tower told the chairman that two additional criteria, located in MRSA 30(A) Section 4404, were not included in Cushing's subdivision regulations but the PB would be asked to attest to them when signing the drawing. He asked that the PB look at Sections 7.19 and 7.20 of the statute. Mr. Remian said he felt these should not be dealt with since they were not in the town's regulations, but Mr. Cunningham said new criteria were automatically incorporated and should, therefore, be voted on.

ACTION: Mr. Ellis made a motion, seconded by Mrs. Kalloch, for a positive finding of fact on 7.19 (Impact on adjoining municipalities)
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Kiskila, to accept Mr. Tower's statement that his amendment would not restrict sunlight (Title 38, Section 4405).
Carried 5-0-0

Mr. Cunningham suggested to the chairman that the PB not address Section 8.1 at this time due to the lingering issue of RP/LR designation of the roadway. The PB then moved on to a review of the General Requirements.

ACTION: Mr. Remian made a motion, seconded by Mr. Kiskila, that the Board pass over 8.1 (Conform to the comprehensive plan) at this time, on advice of counsel.
Carried 5-0-0

Mr. Ellis reiterated the Board's request that a third party be required to delineate RP in lots on both sides of the LR zone. He said the question of what was buildable outside the zone¹ required determination of the boundaries of the RP district so the PB could determine if there was an alternate route for road access. Since requirement 8.2 spoke to RP, Mr. Ellis felt the Board could not vote on that at this time. Mr. Tower stated that determining if there was an area within the LR district suitable for permitted activities did not require that the boundary of LR be determined; simply identifying that there was a suitable area was adequate. At the last meeting, the applicant said, there was discussion of this issue and the PB chose no action because the item was not on the agenda. He said he would pose his question again, "Is there anyone on this Board who, on the basis of the topographical information submitted, has any question that there is a buildable area

on Lot 26?" Both Mr. Ellis and Mr. Remian responded that they did question that assertion. Mr. Tower said that this lot contained a 1-acre area that was relatively flat and, thus, provided room to build a house. Mr. Ellis said he could not determine that from what he saw on the plan and he wanted to rule out an acceptable alternate roadway route. Mr. Remian said that Mr. Tower himself had admitted that his submission did not include field-delineated topography, leaving its accuracy unproven. Mr. Remian confirmed that Mr. Ellis was saying he lacked sufficient evidence to rule on the 8.2 standard.

Mr. Tower then asked if anyone on the Board believed that the land on the hammerhead peninsula could not be groomed by removing trees and brush, according to the SZ minimum standards. Mr. Tower said he did not have to stay 75' (RP) from the shoreline for grooming within the SZ; the standards were different for the first 75', but it could be groomed. He said grooming the lot was a permitted use, with no permit being required. Mr. Tower continued, "Now that we have established a permitted use," whereupon Mr. Ellis interjected that, though Mr. Tower may have established a permitted use, he had not. Mr. Tower then asked CEO Bickford if, in his opinion as a CEO, if the applicant could groom a lot from the waterline to the limits of the SZ line as long as he complied with the grooming standards in the SZ ordinance. Mr. Bickford replied that a lot could be groomed if it was not in RP and that grooming it did not require going through RP for access. Mr. Tower said Mr. Bickford had gone too far. He asked the CEO to answer his question and Mr. Bickford said a lot in an LR district could be groomed. Mr. Tower then asked if one could not also groom the RP zone (the first 75' from the waterline) and the CEO agreed one could, under the right circumstances. Mr. Tower asked what the right circumstances were and Mr. Bickford responded that it not be directly in RP and that it only be groomed.

Mr. Cunningham said he thought there was some confusion about the terms being used and said the Board had been through this before. He said he didn't think anyone on the Board knew whether there was RP on that lot or not. In answer to Mr. Tower's question asking if 75' from the waterline was RP, Mr. Cunningham said the answer was no. There was a 75' setback, which was protected under both the Natural Resources Act and under Cushing's ordinance, but it was not necessarily RP. Mr. Cunningham continued that it might be RP but the Board was looking to Mr. Tower to present the evidence to prove it so.

Mr. Tower then directed the Board to look at his plan and also read the ordinance's measurement of RP zone, based on slopes that began at elevation 20. Mr. Ellis said he understood that, on the town's map, all 250' was included as RP when RP existed within the 250'. Mr. Cunningham disagreed, saying the town's map depicted the 250' SZ Districts and then indicated if there was a RP inside those districts. The question, he said, was where the RP was located and who made the delineation. Mr. Remian said it had been voted at a past meeting to have a third party delineate the RP and Mr. Tower agreed to get a proposal from Gartley & Dorsky Engineering & Surveying to do the work. Mr. Tower replied that it would be a conflict of interest for Gartley & Dorsky to do any work on this project because he and they were in discussions of merger. Mr. Remian said that was not the case at the time it had been voted on. Mr. Tower replied that perhaps it was and said he was surprised that Gartley & Dorsky submitted a proposal. Mr. Remian replied that the Board would find someone else to do the delineation.

Mr. Tower then read Note 7 from Section 14 (Table 1) under the SZ ordinance, "Except to provide access to permitted uses within the district, or where no alternative route or location is available outside the RP, in which case a PB permit is required." Mr. Cunningham said this was attributable to a standard in Section 15(G)(4), "New roads and driveways are prohibited in a RP District except to provide access to permitted uses within the district, or as approved by the PB upon a finding that no reasonable alternative route or location is available outside the district, in which case the road or driveway shall be set back." Mr. Tower repeated that grooming on the hammerhead peninsula was a permitted use and a road to it was required, whether or not it went through a RP District.

Mr. Remian said that Mr. Tower had not explored an alternative to his proposed road. Mr. Tower said alternative routes had been discussed and this was the one that would work. The chairman said he thought Lot 10 could be an access to Lot 26 and Mr. Tower disputed this, saying that there

were sheer ledge faces that would need to be traversed anywhere on Lot 10 that could be used to access Lot 26. Mr. Remian replied that he felt there were more flat places on Lot 10 than on Lot 26 and Mr. Tower said that an unreasonable amount of ledge would need to be removed to go through Lot 10. Mr. Remian said he felt there was already an intrusion into RP on Lot 10 so he would like to see if a road could be put through that area.

Mr. Kiskila said the Board had voted several months ago for a third-party opinion on this issue, with which Mr. Tower agreed at the time, and he would not vote on this until he saw that third-party opinion. Mr. Tower responded that the town was trying to establish its RP boundaries "on my nickel." He suggested that the third-party opinion vote could be rescinded because he had presented adequate evidence. Mr. Ellis asked Mr. Cunningham if he had been misled by DEP that when the town map depicted RP it was the complete zone. Mr. Cunningham replied that he disagreed with DEP's Rich Baker and said that Cushing's ordinance said "areas of two or more contiguous acres". Mr. Ellis quoted Mr. Baker as saying that unless the town voted to change the zones the town map would stand. Mr. Bickford said he had seen RP designated within the 250' setback, 65' being RP and the remainder being LR, on the map in another town. Mr. Ellis said he understood that an applicant couldn't change that; it had to be changed by the town. Mr. Cunningham agreed that a change would require approval by Town Meeting vote and by the DEP. There was discussion of the particulars of the town's map, the problems inherent in it and possible remedies.

Carlton Johnson questioned whether the map in front of the Board was actually a copy of the attested map. Mr. Bickford said it was a copy of the Midcoast Regional Planning Mylar, hanging in the Town Office, which had been approved by the town in 1991. Mr. Cunningham said the Board had made it clear that their imprecise map was insufficient to answer the RP question and they wanted a third-party opinion. Mr. Tower said that previous CEO Boothbay had said repeatedly that this was not an official map and the town referred to the defined RP zones listed in the ordinance; he said he would seek a statement from Mr. Boothbay to back that up. CEO Bickford said he felt the town did not have the right to be less stringent than the state guidelines. Mr. Cunningham said that DEP had said the town could use its map in making decisions. Mr. Tower and Mr. Remian entered into a discussion of relative slope, contiguous slope, etc. This concluded with Mr. Tower saying that he felt he had provided enough evidence that his plan met the town's requirements.

ACTION: Mr. Remian made a motion, seconded by Mr. Kiskila, that 8.2 (Land suitable for development) did not
give the Board substantial credible evidence to determine whether or not this area was located in a
Resource Protection District and he reverted to the Board's motion to hire an outside consultant
to determine that.
Carried 5-0-0

Mr. Cunningham asked if the Board wanted to reconsider its vote on Review Criteria 7.9, where it made a positive finding that the application complied with local ordinances and plans.

ACTION: Mr. Kiskila made a motion, seconded by Mr. Ellis, to withdraw his motion to make a positive finding of fact
on 7.9 (Conformity with local ordinances and plans).
Carried 5-0-0

Mr. Tower suggested that the discussion and further consideration of the Robbins Mountain Subdivision be tabled until the next meeting so other items on the agenda could be heard. He requested that the PB schedule a Site Walk of the Robbins subdivision. It was scheduled for Monday, May 8, at 4:00 pm.

ACTION: Mr. Remian made a motion, seconded by Mr. Ellis, to table further discussion of the Meduncook
Plantation amendment application until the next meeting.

Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mr. Ellis, to table Robbins Mountain until the next meeting.

Carried 5-0-0

Patrick Cardon asked the chairman if he could speak and was given permission. Carlton Johnson said Mr. Cardon would be out of order because the issue had been tabled. Mr. Remian said he would allow some latitude since he did not know what Mr. Cardon would be speaking about. Mr. Cardon said he would read a statement and then submit it to the Board. Mr. Cardon said that a map in Section 4 of the Robbins Mountain Subdivision application depicted his lot as part of that subdivision. He said no one had contacted him about this and he felt it raised questions about the work done by surveyors on behalf of Cushing Holdings LLC. Mr. Cardon wondered if this had happened to other adjacent landowners and suggested the PB and the town might be at risk if the situation was not corrected. Mr. Remian thanked him and Mr. Muddle said the members would note Mr. Cardon's concerns.

6. Craig Lord, Application for Land Use Permit for Structure and Driveway, Map 6, Lot 22-8,

Hornbarn Hill Subdivision: Craig Lord, Moorestown, NJ, introduced himself and said he was seeking a Land Use Permit for a driveway and house on his lot. Mrs. Kalloch asked if he had a soil test and Mr. Remian said it had been submitted this afternoon. Mr. Ellis confirmed that Mr. Lord's drawing correctly located the house at 202' from the shoreline. Mr. Remian said this was a late submission, of which he only had a copy. In light of the fact that Mr. Lord had been waiting 3-1/2 hours, he asked the Board to vote on whether to accept the late submission.

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, to accept the late submission.

Carried 5-0-0

Mr. Remian confirmed with Mr. Lord that his planned wastewater system was 80' from the shoreline and said the wastewater system the PB had approved for the Hornbarn Hill [HH] Subdivision was outside Mr. Lord's lot. Mr. Lord said he had amended the plan to exchange the locations of the septic system and well so the well would be uphill of the septic. The Board determined that it did not have a copy of the amended plan that Mr. Lord said had been registered. Mr. Bickford had provided copies of the signed plans, which did not reflect Mr. Lord's changes. Mr. Remian asked Mr. Lord when the plan had been amended and he responded that he had asked Mr. Tower to make the change before he purchased the lot; Mr. Lord said it was recorded in Knox County. Mr. Ellis asked Mr. Tower if he knew the date of the change and Mr. Tower said he did not, though he believed it had been done. Mr. Lord said his attorney, prior to settlement, had investigated it.

Mr. Ellis asked Mr. Cunningham what the PB's obligation was in this situation. Mr. Cunningham stated that a change in septic location would have required a minor subdivision amendment. Carlton Johnson said he believed that the plan on record with Knox County contained additional set backs and buffers on Hornbarn Cove that were not included in one or two earlier versions of the plan. Mr. Lord asked the Board to explain the significance of this issue. Mr. Cunningham responded that the septic location was a feature depicted on the subdivision map and changing it would require an amendment to the plan. Mr. Lord asked if it were not common for an owner to move the septic system based on the house location. Chairman Remian responded that it could not be moved if it was depicted on an approved plan.

Mr. Cunningham said he didn't see any indication that the plan the Board had in front of it was the approved plan. Mr. Lord asked if a changed plan would have to be approved before being filed and Mr. Cunningham said it would for a subdivision. Carlton Johnson interjected that he would presume that the interpretation of having to amend a plan every time a well or septic site was changed was a new interpretation, though not necessarily an erroneous one. He said he could furnish a copy of the plan that would show numerous changes to locations of septic fields. He said the original plan reflected septic sites located by walking on the site, in a forest, and picking an area they thought would work. During the course of being under contract and making transfers, he said, the individual property owners had the same site evaluator go back and do the full design,

with the benefit of grooming and knowing the proposed house location, and there were many changes as a result. As those changes were made, Mr. Johnson said, the developer had reported the buffer zone and referred to it in covenants so the theme and premise of the septic and well circles were not in conflict with those of adjacent landowners. Mr. Johnson said it was misunderstood or misrepresented that the plan would have to be amended each time this happened; he said amending each change might constitute a burden on the PB.

Mr. Remian responded that this issue had come up before and, in fact, Mr. Ellis had questioned it on the Robbins Mountain Subdivision application. Mr. Remian said he would like to eliminate the requirement to amend each change. Mr. Cunningham said the ordinance required identification of the location of the test pits; the applicant had gone above and beyond by including both the structure of the septic and a buffer zone around it. If only the test pit had been depicted, the buyer would not have to seek an amendment to locate the septic, he said. CEO Bickford said that when a circle crossed a property line it put a restriction on the other property. Mrs. Kalloch asked where Mr. Lord's well was planned and he pointed it out on his map. Chairman Remian noted that it was now 11:00 pm.

ACTION: Mr. Remian made a motion, seconded by Mr. Ellis, to extend the meeting to deal with Mr. Lord's agenda item.
Carried 5-0-0

Mr. Remian asked Mr. Lord if he could move his house any further back than 202'. Mr. Lord responded that he could not because there was a 50' front yard requirement. Mr. Ellis noted that no RP area was depicted on Mr. Lord's plan and Mr. Lord said he understood that his lot was not in RP. James Tower interjected that during approval of the HH Subdivision there was discussion of RP due to steep slopes. He asserted that when the vote was taken it was on the basis of that discussion, during which the PB accepted the definition of the plateaus and ledges that broke the contiguous slope area into much less than 2 acres. Mr. Ellis said Mr. Lord's was a SZ application and RP would have to be established for it. Mr. Tower asked why it would be any different from what was already approved and Mr. Ellis said it looked as though the subdivider had not provided any RP depiction. Mr. Remian ascertained that the HH application had been approved in February 2004.

Chairman Remian asked Mr. Lord to explode his drawing and the applicant produced a survey done by a private surveyor. He pointed out the lot, house, driveway and septic locations, as well as the easement for moving his well; he said this was identical to the plan he had provided for the PB. There was some discussion as to location of house and driveway. Mrs. Kalloch asked if the house could be moved out of the SZ and Mr. Lord replied that SZ was 250' and he had a 50' from the road front line requirement in his deed covenants. Chairman Remian said Mr. Lord would not have room for his house with the setback and wondered if he should ask for a waiver. Mr. Bickford said if there was RP it stopped somewhere between Lots 8 and 9. Mr. Lord said he had listened to the criteria review for other applicants tonight and said RP must have been considered when the HH subdivision had been approved; he said it was a hardship for him to have to apply for it now. Mr. Remian said he was going to look into that and a subdivision approval did not attest to the build-ability of any lot. Mr. Cunningham said the PB did not decide what lots were in RP. Mr. Lord argued that that was handled when the subdivision was approved and Mr. Cunningham said there was no indication on the plan of whether there was RP on his lot. Mr. Tower said the vote of approval indicated that there was no RP in HH subdivision. Mr. Ellis said the PB had approved a plan with no depiction of RP, but had not necessarily approved where RP was located and perhaps the developer had not shown RP. Mr. Tower responded that the PB had discussed RP and voted that there was no RP in this case.² Mr. Ellis countered that the Board did not determine where RP was located. Mr. Tower said Mr. Cobey had raised the issue during review and Mr. Tower had responded that there was no area in the subdivision with a sustained slope of greater than 20% for two acres; he said the PB approved the subdivision based on his testimony.

Chairman Remian said he did not want to hold Mr. Lord up and he felt the setback was sufficient, even though the house would be in SZ; however, until the Board looked into the application

approval, perhaps a waiver was needed. Mr. Cunningham said the PB had to know what other zoning it was dealing with in this case and asked if Rich Baker had looked at Mr. Lord's lot. Mr. Bickford said that Mr. Baker thought most of Lot 8 and possibly some of Lot 9 was in RP. Mr. Remian said Mr. Lord's topographical information showed the lot to be more than 30% slope in the SZ and the CEO agreed that it was. Mr. Lord asked if they were taking an average and pointed out flat areas. Mr. Cunningham said the state suggested the lot was in RP. Mr. Lord said he had researched the lot before purchasing it; he had looked at the map in the Town Office and had been told it was not the official map and he should refer to the ordinances, which he did. He said his lot was not on the list of lands in RP, he had an approved subdivision and the PB could not retroactively tell him his was not a buildable lot.

Mr. Cunningham said he could find nothing about a 50' setback in the HH covenants and asked if the Board that approved the subdivision knew there was a private 50' setback requirement. If it were not for the 50' setback, Mr. Lord could build outside the RP, the attorney said. He further suggested that the PB research the approval. Mr. Ellis told Mr. Lord that the state and town were the enforcing bodies on regulations and the state's representative said there was RP on his lot. Mr. Lord said the state was consulted on the subdivision and asked why it would be a question now. He stated that his house would be located in an area of less than 20% slope. Mrs. Kalloch suggested the Board take a look at the approval and give Mr. Lord a decision at the first of the week. Mr. Johnson suggested the Board refer to Mr. Baker's email that Mr. Tower had tried to submit earlier; Mr. Johnson said Mr. Baker had said homes could be sited within the RP. Mr. Ellis said that Mr. Baker had also said the town would have to vote on rezoning.

Mr. Cunningham said he felt there was room to build a house even with the 50' front setback but Mrs. Lord said the lot was only 330' deep and the driveway had to be taken into consideration. There was discussion of the lot and its parameters. Mr. Johnson read from Mr. Baker's email and said it was proof that the town could elect to place a buildable area within the RP. Mr. Cunningham said he did not agree with Mr. Johnson's interpretation because it would result in inconsistent zoning. CEO Bickford said he would agree if the town voted on it and the state approved it; however, the PB could not approve it. (*Many people speaking at once.*) Mr. Cunningham said if the PB did not have information about RP in front of it when the subdivision was approved it would not have made a determination one way or the other; the applicant was proposing this as suitable for development. Mr. Tower repeated that the Board did discuss it and there was no RP shown on the drawing because they decided there was none. Mr. Lord repeated his arguments.

Mr. Remian asked Mr. Lord if he would consider a waiver. Mr. Cunningham said the PB could not grant a variance for use. Mr. Muddle said it would be difficult to prove hardship, which was required for a variance, and asked if there was no grandfather option. Mr. Cunningham said the PB had to know what facts were before the Board when it approved the subdivision in order to know if the Board was fully informed when it made its decision. He said it was also in Mr. Lord's interests, for title purposes, to know if the PB made an error when it approved the subdivision. Mr. Lord said he was applying for a Land Use permit on an approved lot and the PB could simply approve it. Mr. Cunningham said that Mr. Lord was subject to a private restriction that prevented him from building.

Chairman Remian asked the applicant to give the Board a week to look into the issue. Mr. Lord said he could not come up from New Jersey every week and the chairman said he thought the CEO could handle the communications. Mr. Kiskila said he was on the Board when HH was approved and he recalled no discussion of RP at that time; he had never heard the term "RP" until after the previous CEO had left. Mr. Bickford suggested asking the MMA for its opinion but Mr. Tower objected that the MMA would side with the town.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Muddle, to postpone the discussion for one week.

Carried 4-1-0 (Mr. Ellis voted against)

Mr. Lord asked what choices the PB would have in making a decision. Chairman Remian replied

that he wanted to find out what the previous PB had done, to check with the DEP to see what it would allow and to get a copy of the signed plan from the Registry of Deeds. Mr. Remian said he wanted enough evidence to ensure the Board's decision did not cause trouble for any of the parties.

Mr. Tower requested a copy of Cushing's attested SZ map tonight. Chairman Remian said he was unsure if the Town Office map was attested and both Mr. Tower and Mr. Johnson said if it was not then it was not legal.

7. Adjournment: Mr. Remian made a motion, seconded by Mr. Muddle, to adjourn at 12:00 pm.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey
(Transcribed from the tape recordings and notes of Crystal Robinson)

Approved 6/7/06